

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5

HYOSUNG USA, INC.

Employer-Petitioner

and

Case 5-RM-1024

UNITE HERE LOCAL 1335

Union

and

MID-ATLANTIC REGIONAL JOINT BOARD,  
WORKERS UNITED, a/w  
SERVICE EMPLOYEES INTERNATIONAL UNION

Union

**DECISION AND ORDER**

The Employer-Petitioner, Hyosung USA, Inc., a Delaware corporation, (the Employer) is engaged in the manufacture of tire reinforcement cord at its Scottsville, Virginia facility, the only location involved in this proceeding, and at approximately nine other manufacturing facilities in other states in the eastern United States. There are approximately 80 employees in the bargaining unit at the Scottsville facility. UNITE HERE claims to be the collective-bargaining representative of the unit employees at Scottsville. Local 1335 and the Mid-Atlantic Regional Joint Board, Workers United, affiliated with Service Employees International Union (the Joint Board) also claims to represent the same group of employees. The Employer filed this petition under Section 9(c) of the National Labor Relations Act, asserting that both unions presented a claim to be recognized as the collective-bargaining representative of the Scottsville employees.

The sole issue is whether an election should be directed in this matter or whether the instant representation petition should be dismissed under Section 9(c)(3) of the Act because no question concerning representation exists.

The Employer appeared at the hearing and stated that it had a good working relationship with the Joint Board, and requested that Local 1335, affiliated with the Joint Board, be named the representative of its employees in Scottsville. The Joint Board also appeared at the hearing, presented evidence and argument, and filed a post-hearing brief. UNITE HERE did not appear at the hearing or file a brief.

I have carefully considered the evidence and argument presented by the Employer and the Joint Board at the hearing and in the Joint Board's brief. As discussed below, I conclude that the petition should be dismissed because no question concerning representation exists.

## **I. STATEMENT OF FACTS**

The Joint Board has represented employees at the Scottsville facility for approximately 50 years through Local 1335, a member local of the Joint Board. The Joint Board has existed for approximately 60 years under various names. At one time it was called the Upper South Regional Joint Board. In 1983 it became the Mid-Atlantic Regional Joint Board. When the Joint Board was founded it was affiliated with the Textile Workers Union of America. In 1976, that union merged with the Amalgamated Clothing Workers to form the Amalgamated Clothing and Textile Workers Union, ACTWU. In 1995, ACTWU merged with ILGWU to form the Union of Needletrades, Industrial and Textile Employees, which shortly thereafter became UNITE. In 2004 UNITE merged with another union, HERE, to form UNITE HERE. Finally, in 2009, the Joint Board affiliated with Workers United, itself an affiliate of SEIU.

The record shows that the incumbent union, Local 1335, was associated with and represented by the Joint Board. John Chwan began employment with the Employer in 2005 as its controller. Since 2006, when Jim Sayers, an official of the Joint Board, came to the site to meet with shop stewards and other employees, Chwan or Roger Hutchins, the plant general manager, would meet with Sayers as well. Sayers was the Joint Board representative assisting the employees at Scottsville. The Employer remitted union dues to the Joint Board at 7-9 Mulberry Street in Baltimore, the Joint Board's office. When the Employer changed its name to Hyosung USA in 2008, it sent a letter to Harold Bock, Regional Director of the Mid-Atlantic Regional Joint Board, at "UNITE HERE! Mid-Atlantic Regional Joint Board" at the Mulberry Street address and asked Bock to please sign a new copy of the collective-bargaining agreement recognizing the Employer's new name. Joint Board representatives attended at least some of the Local 1335 membership meetings, and reports would be sent to Bock. Sometimes Bock attended meetings. Before collective bargaining, the Joint Board surveyed members about what they wanted in the new contract. Grievances were dealt with by Local 1335 stewards at Scottsville, and if no resolution was found, would be brought to the Joint Board for assistance from Sayers and Bock. If a grievance were to go to arbitration, the Joint Board would cover the costs. If the Local 1335 delegate were to go to the national convention, the Joint Board would pay the expenses for that as well.

The most recent collective-bargaining agreement, effective 2007-2010, states on its cover page that it is between "Hyosung America, Inc. Scottsville Plant" and "UNITE/HERE and its Local 1335." The preamble lists the same parties. The signature page lists the union as "Union of Needletrades, Industrial and Textile Employees and its Local 1335," and is signed by Bock and others. The Joint Board negotiated the agreement without input from

UNITE HERE. In years past Bock has negotiated several contracts with the predecessors of Hyosung.

The Joint Board has had its own constitution, officers, elections, governance, offices, bank accounts, financial records, tax and other government filings, and its own charter.

UNITE HERE played no role in any of these areas.

Bock testified that the Joint Board admitted employees into membership, but employees do not elect the officers and executive board of the Joint Board. Rather, they are elected by delegates from the locals that comprise the Joint Board. The Joint Board negotiates and administers contracts and handles grievances and arbitration for several other locals besides Local 1335, and also engages in organizing activity.

On February 5, 2009, Local 1335 held a meeting at which the members approved a resolution supporting action to end the merger of UNITE and HERE and to seek an affiliation with SEIU. Between approximately March 1 and March 10, 2009, Local 1335 members collected 42 signatures on a petition circulated among the unit members stating that they supported ending the merging of UNITE and HERE, that they wished Local 1335 and the Joint Board to affiliate with SEIU, and that they wanted the Joint Board and Local 1335 to continue to represent them.

On March 7, 2009, the Joint Board delegates voted 62-8 to disaffiliate from UNITE HERE due to internal strife within that union and to strike UNITE HERE from the Joint Board constitution. There were also elections to the Joint Board Executive Board at that meeting. The Joint Board informed the Employer of the disaffiliation in March.

Since the disaffiliation, there have been no changes to the locals, the leadership structure, or the way that the Joint Board has represented employees at its various locals.

Sayers, of the Joint Board, has continued as the representative to Local 1335. Local 1335, in turn, has continued its representational activities as before.

Chwan testified that the Employer received separate letters in April from UNITE HERE and from Workers United, both claiming to represent the employees at the Scottsville facility and to be the correct entity to which the Employer should send dues. Chwan called Sayers and then also spoke with Bock. Bock sent Chwan a copy of “a similar Board hearing that took place out in San Francisco.”<sup>1</sup> Chwan and Bock exchanged emails and Chwan was concerned that if the Employer recognized the wrong union and paid dues accordingly, it might have to pay them again if the Board decided later on that the other union was the employees’ representative. After discussing the matter with his superior, Chwan filed the instant petition seeking an election to determine the identity of the employees’ representative.

## II. ANALYSIS

Based on the record evidence, I conclude that no question concerning representation exists. This case does not involve a claim that the Employer has a good faith doubt regarding Local 1335’s majority status. Rather, the Employer asserts that it seeks an election to establish whether it should recognize UNITE HERE! or Local 1335 and the Joint Board as its employees’ statutory representative.

In *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143, 147 (2007), the Board held that “when there is a union merger or affiliation, an employer’s obligation to recognize and bargain with an incumbent union continues unless the changes resulting from the merger or affiliation are so significant as to alter the identity of the bargaining

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<sup>1</sup> On June 12, 2009, Region 20 dismissed a similar petition concerning this same issue in a dispute between UNITE HERE and the Western States Regional Joint Board, in *Royal Laundry*, Case 20-RM-2868. On July 21, 2009, the Board denied UNITE HERE’s request for review of that dismissal.

representative.” *Kravis* held that the question to be asked is whether “the merger or affiliation resulted in a change that is ‘sufficiently dramatic’ to alter the union’s identity. *Id.* (quoting *May Department Stores*, 289 NLRB 661, 665 (1988), *enfd.* 897 F.2d 221 (7<sup>th</sup> Cir.1990)). This is a totality of the circumstances test. *Mike Basil Chevrolet*, 331 NLRB 1044 (2000).

In this case, the actions of Local 1335 and the Joint Board to disaffiliate from UNITE HERE and affiliate with Workers United/SEIU do not raise a question concerning representation. The record shows that there is substantial continuity between the incumbent and successor entities. The Joint Board performed all representative duties for Local 1335 at the Scottsville facility before the affiliation with Workers United: negotiating contracts; administering contracts; processing grievances; collecting dues; and other duties. The Joint Board continues to perform these duties since its affiliation with Workers United. Sayers and Bock continue to administer the contract for Local 1335, and there is no evidence of major change to the Executive Board of the Joint Board. There is no evidence that the shop stewards have changed. There is no evidence of any significant change to the employees’ representative after the affiliation with Workers United.

The Joint Board has performed representation duties for the unit at the Scottsville facility for decades, and the employees clearly have aligned themselves with the Joint Board. The members have voted to maintain Local 1335 and the Joint Board as their representative. The Joint Board continues to maintain its own elected officials, constitution, offices, and governance procedures after the affiliation – the same ones it maintained when it was affiliated with UNITE HERE.

The contract that the Joint Board currently administers is one which the Joint Board, through Bock and others, negotiated without UNITE HERE. The Employer, despite the filing of the petition, also identifies Bock and the Joint Board as the entity responsible for representing its employees. When Hyosung changed its name, the Employer sent notice to Bock and asked him to sign a new collective-bargaining agreement reflecting this change.

In conclusion, I find that Local 1335 and the Joint Board at all material times have been the collective-bargaining representative, and continue to remain the collective-bargaining representative of the unit at the Scottsville facility. A local union has extensive liberty to designate a spokesperson, liaison or representative. Since at least the past fifty years, Local 1335 has designated the Joint Board to fulfill such a role and, as described above, the Joint Board's charge has been nearly all-encompassing. Local 1335 has continued to operate as it did prior to the Local's and the Joint Board's disaffiliation with UNITE HERE, and the affiliation with Workers United. Thus, there is no question concerning representation and I must dismiss the petition.

### **ORDER**

The petition is dismissed.

### **RIGHT TO REQUEST REVIEW**

***Right to Request Review:*** Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for

review must contain a complete statement setting forth the facts and reasons on which it is based.

***Procedures for Filing a Request for Review:*** Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **August 31, 2009**, at 5 p.m. (ET), unless filed electronically.

**Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.<sup>2</sup> A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that

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<sup>2</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.



the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

/s/ Wayne R. Gold

Dated: August 17, 2009

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Wayne R. Gold, Regional Director  
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